

# Senate File 66 - Introduced

SENATE FILE 66

BY PETERSEN

## A BILL FOR

1 An Act requiring employers to provide reasonable accommodations  
2 to employees based on pregnancy or childbirth and making  
3 penalties applicable.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 216.2, Code 2017, is amended by adding  
2 the following new subsections:

3 NEW SUBSECTION. 01. "*Adverse action*" means any action  
4 that might dissuade a reasonable employee from engaging in  
5 activities protected under this chapter. "*Adverse action*"  
6 includes but is not limited to failing to reinstate the  
7 employee to the employee's original job or to an equivalent  
8 position with equivalent pay and accumulated seniority,  
9 retirement, fringe benefits, and other applicable service  
10 credits when the employee's need for a reasonable accommodation  
11 ceases.

12 NEW SUBSECTION. 14A. "*Undue hardship*" means an action  
13 requiring significant difficulty or expense.

14 Sec. 2. Section 216.6, subsection 2, paragraph a, Code 2017,  
15 is amended to read as follows:

16 a. A written or unwritten employment policy or practice  
17 which excludes from employment applicants or employees because  
18 of the employee's pregnancy is a ~~prima facie~~ violation of this  
19 chapter.

20 Sec. 3. Section 216.6, subsection 2, Code 2017, is amended  
21 by adding the following new paragraphs:

22 NEW PARAGRAPH. f. An employer shall provide to an employee  
23 a private, secure, and sanitary space and break time to express  
24 breast milk for a nursing child.

25 NEW PARAGRAPH. g. (1) For the purposes of this paragraph,  
26 unless the context otherwise requires:

27 (a) "*Reasonable accommodation*" includes but is not limited  
28 to more frequent or longer breaks, time off to recover  
29 from childbirth, acquisition or modification of equipment,  
30 performance of job duties while seated, temporary transfer to a  
31 less strenuous or hazardous position, job restructuring, light  
32 duty, assistance with manual labor, or modified work schedules.

33 (b) "*Related medical condition*" includes but is not limited  
34 to lactation or the need to express breast milk for a nursing  
35 child.

1       (2) It shall be an unfair or discriminatory practice for an  
2 employer to do any of the following:

3       (a) Deny a reasonable accommodation in the terms,  
4 conditions, or privileges of employment to a job applicant or  
5 employee based on the employee's or applicant's pregnancy,  
6 childbirth, or related medical condition if the employee or  
7 applicant requests a reasonable accommodation, unless the  
8 employer can demonstrate that providing the accommodation would  
9 impose an undue hardship on the employer's program, enterprise,  
10 or business.

11       (b) Retaliate or take adverse action against an employee who  
12 requests or uses a reasonable accommodation pursuant to this  
13 paragraph.

14       (c) Deny employment opportunities to a job applicant or  
15 employee if such denial is based on the need of the employer  
16 to make a reasonable accommodation to the job applicant or  
17 employee pursuant to this paragraph.

18       (d) Require a job applicant or employee affected by  
19 pregnancy, childbirth, or a related medical condition to accept  
20 an accommodation that the applicant or employee declines to  
21 accept.

22       (e) Require an employee to take employment leave if another  
23 reasonable accommodation can be provided pursuant to this  
24 paragraph without undue hardship to the employer.

25       (f) Make an inquiry prior to employment regarding a  
26 job applicant's pregnancy, childbirth, or related medical  
27 condition.

28       (3) An employer shall engage in a timely, good-faith, and  
29 interactive process with an employee to determine effective  
30 reasonable accommodations pursuant to this paragraph.

31       (4) (a) An employer shall have the burden of proving undue  
32 hardship under this paragraph. In making a determination of  
33 undue hardship, factors to be considered by the commission  
34 include but are not limited to:

35       (i) The nature and cost of the accommodation.

1 (ii) The overall financial and other resources of the  
2 employer.

3 (iii) The overall size of the business of the employer with  
4 respect to the number of employees.

5 (iv) The number, type, and location of the employer's  
6 facilities.

7 (b) The fact that an employer provides or would be  
8 required to provide a similar accommodation to another class  
9 of employees that requires such accommodation shall create a  
10 rebuttable presumption that the accommodation does not impose  
11 an undue hardship on the employer.

12 (5) An employer shall post written notice in a form  
13 prescribed by the commission of the right to be free from  
14 discrimination in relation to pregnancy, childbirth, or a  
15 related medical condition, including the right to reasonable  
16 accommodations based on pregnancy, childbirth, or a related  
17 medical condition, pursuant to this paragraph conspicuously  
18 at the employer's place of business in an area accessible  
19 to employees. The notice shall state the employee's right  
20 to a private, secure, and sanitary space and break time to  
21 express breast milk for a nursing child and shall include the  
22 employer's specific plan to meet this requirement. The notice  
23 shall also be provided to the following:

24 (a) New employees at the commencement of employment.

25 (b) Existing employees by January 1, 2018.

26 (c) Any employee who notifies the employer of the employee's  
27 pregnancy within ten days of such notification.

28 (6) The commission shall develop courses of instruction  
29 and conduct ongoing public education efforts as necessary to  
30 inform employers, employees, employment agencies, and job  
31 applicants regarding their rights and responsibilities under  
32 this paragraph.

33 (7) This paragraph shall not be construed to narrow  
34 or restrict any other provision of law relating to sex  
35 discrimination or pregnancy, or to diminish any right or

1 responsibility thereunder.

2     NEW PARAGRAPH.   *h.*   It is the intent of the general assembly  
3     that a violation of this subsection constitutes an unfair or  
4     discriminatory practice in violation of this chapter, subject  
5     to the processes and remedies set forth in this chapter, and  
6     further, that the burden-shifting analysis articulated by the  
7     United States supreme court in McDonnell Douglas Corp. v.  
8     Green, 411 U.S. 792 (1973), shall not be applicable to the  
9     proper construction of this subsection.

10	EXPLANATION
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11 The inclusion of this explanation does not constitute agreement with  
12 the explanation's substance by the members of the general assembly.

13       This bill prohibits an employer from denying a reasonable  
14 accommodation in the terms, conditions, or privileges of  
15 employment to a job applicant or employee based on the  
16 employee's or applicant's pregnancy, childbirth, or related  
17 medical condition upon request, unless the employer can  
18 demonstrate that providing the accommodation would impose an  
19 undue hardship on the employer.

20 The bill prohibits an employer from retaliating or taking  
21 adverse action against an employee who requests or uses such a  
22 reasonable accommodation.

23 The bill prohibits an employer from denying employment  
24 opportunities to a job applicant or employee if such denial is  
25 based on the need of the employer to make such a reasonable  
26 accommodation.

27 The bill prohibits an employer from requiring a job  
28 applicant or employee affected by pregnancy, childbirth, or a  
29 related medical condition to accept an accommodation that the  
30 applicant or employee declines to accept.

31 The bill prohibits an employer from requiring an employee  
32 to take employment leave if another reasonable accommodation  
33 can be provided pursuant to the bill without undue hardship to  
34 the employer.

35 The bill prohibits an employer from making an inquiry

1 prior to employment regarding a job applicant's pregnancy,  
2 childbirth, or related medical condition.

3 The bill defines "reasonable accommodation" to include but  
4 not be limited to more frequent or longer breaks, time off  
5 to recover from childbirth, acquisition or modification of  
6 equipment, performance of job duties while seated, temporary  
7 transfer to a less strenuous or hazardous position, job  
8 restructuring, light duty, break time and private non-bathroom  
9 space for expressing breast milk, assistance with manual labor,  
10 or modified work schedules.

11 The bill defines "related medical condition" to include but  
12 not be limited to lactation or the need to express breast milk  
13 for a nursing child.

14 The bill defines "adverse action" as any action that might  
15 dissuade a reasonable employee from engaging in activities  
16 protected under Code chapter 216 and specifies that "adverse  
17 action" includes but is not limited to failing to reinstate the  
18 employee to the employee's original job or to an equivalent  
19 position with equivalent pay and accumulated seniority,  
20 retirement, fringe benefits, and other applicable service  
21 credits when the employee's need for a reasonable accommodation  
22 ceases.

23 The bill defines "undue hardship" as an action requiring  
24 significant difficulty or expense.

25 The bill requires an employer to engage in a timely,  
26 good-faith, and interactive process with an employee to  
27 determine effective reasonable accommodations pursuant to the  
28 bill.

29 The bill specifies that an employer shall have the burden  
30 of proving undue hardship under the bill. The bill provides  
31 a nonexclusive list of factors to be considered by the civil  
32 rights commission in making such a determination. The bill  
33 specifies that an employer who provides or would be required to  
34 provide a similar accommodation to another class of employees  
35 that requires such accommodation shall create a rebuttable

1 presumption that the accommodation does not impose an undue  
2 hardship on the employer.

3     The bill requires an employer to post written notice of the  
4 right to be free from discrimination in relation to pregnancy,  
5 childbirth, or a related medical condition, including the  
6 right to reasonable accommodations and a private, secure,  
7 and sanitary space and break time to express breast milk for  
8 a nursing child, conspicuously at the employer's place of  
9 business in an area accessible to employees. The bill also  
10 requires such notice to be provided to new employees, existing  
11 employees by January 1, 2018, and any employee who notifies the  
12 employer of the employee's pregnancy.

13     The bill requires the civil rights commission to develop  
14 courses of instruction and conduct ongoing public education  
15 efforts as necessary to inform employers, employees, employment  
16 agencies, and job applicants regarding their rights and  
17 responsibilities under the bill.

18     The preceding provisions of the bill shall not be construed  
19 to narrow or restrict any other provision of law relating to  
20 sex discrimination or pregnancy, or to diminish any right or  
21 responsibility thereunder.

22     The bill requires an employer to provide to an employee a  
23 private, secure, and sanitary space and break time to express  
24 breast milk for a nursing child.

25     Under current law, a written or unwritten employment policy  
26 or practice which excludes from employment applicants or  
27 employees because of the employee's pregnancy is a prima facie  
28 violation of Code chapter 216. The bill removes the phrase  
29 "prima facie," so that such employment policies or practices  
30 are violations of Code chapter 216.

31     The bill states that it is the intent of the general  
32 assembly that a violation of Code section 216.6, subsection 2,  
33 which governs employment policies relating to pregnancy and  
34 childbirth, constitutes an unfair or discriminatory practice  
35 in violation of Code chapter 216, subject to the processes

1 and remedies set forth in Code chapter 216, and further, that  
2 the burden-shifting analysis articulated by the United States  
3 supreme court in McDonnell Douglas Corp. v. Green, 411 U.S. 792  
4 (1973), shall not be applicable to the proper construction of  
5 Code section 216.6, subsection 2.

6     Penalty provisions for discriminatory employment practices  
7 are applicable to the requirements established in the bill.